

From: Peter Kaplan
To: CCB CCBSecretary
Date: Mon, Nov 11, 2002 5 32 PM
Subject: Fairfax County Public Schools FCC Appeal

DOCKET FILE COPY ORIGINAL

Attached is a Fairfax County Public Schools letter of appeal to the Federal Communications Commission regarding the E-rate program. Please send a confirmation email back in order to confirm receipt of this email.

Thank you

96-45

Peter Kaplan

Director, Regulatory Affairs

Funds For Learning, LLC

2111 Wilson Blvd. Suite 700

Arlington, VA 22201

Ph 703/351-5070

Email: pkaplan@fundsforlearning.com

www.fundsforlearning.com

CC: otheend@fundsforlearning.com

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
)	
Request for Review of the Revised Decision of the)	
Universal Service Administrator by)	
)	
Fairfax County Public Schools)	SLD/NCS Barcode:
)	NEC.471.03-13-00.29600003
)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

To: The Wireline Competition Bureau

REQUEST FOR REVIEW

Fairfax County Public Schools ("FCPS" or "School District"), by its representative, hereby requests review of the Revised Administrator's Decision on Appeal – Funding Year 1999-2000, dated September 12, 2002. (Exhibit A).

In its original decision, dated September 10, 2001, the Administrator ("SLD") concluded that the School District's appeal "brought forward persuasive information that [its] application should be data entered and considered for funding." (Exhibit B). The issue was and continues to be whether the on-line Form 470 that the School District filed to support its Funding Year Two Form 471 was valid. According to the SLD, the form's only alleged infirmity was that it was nominally labeled as a

Funding Year Three (“FY3”), rather than a Funding Year Two (“FY2”), Form 470. In its Letter of Appeal, FCPS explained why it would be unfair and inequitable under the circumstances to invalidate the Form 470 for this reason (Exhibit C), and the SLD found the School District’s contentions “persuasive.”

The SLD agreed that it had been wrong to penalize the School District for selecting FY3, presumably because FY2 had not even been an option. In its revised decision, however, the SLD concluded that it could not stand by its original decision because of the Commission’s ruling in *Request for Review by Henrico County School District*, DA 02-83 (January 14, 2002) (“*Henrico*”) (Exhibit D). Significantly: the SLD did not retreat from its previous finding for any other reason or in any other respect. But for *Henrico*, therefore, we have to assume that the SLD would not have reversed itself.

For the reasons set forth below, the School District contends that *Henrico* is not controlling. If the Commission disagrees, then the School District contends that the circumstances clearly warrant a waiver of the Commission’s rules.

1. Facts/Administrative History

1. December 8, 1999. FCPS goes on-line to file a Form 470 for file servers. It intends to procure a contract that will cover both Funding Years Two (FY2) and Three (FY3) purchases.
 - i. The SLD’s on-line form requires the School District to associate its Form 470 with a specific funding year and, for that purpose, provides a drop-down menu.
 - ii. On December 8, 1999, the drop-down menu does not include an FY2 option; nor does it include a multi-funding year option. This fact is undisputed.
 - iii. Consequently, the School District has no choice but to select the FY3 option from the drop-down menu.
2. January 12, 2000. FCPS enters into a contract for network file servers. The contract is effective immediately and covers both FY2 and FY3 purchases.

3. March 10, 2000. Inside the FY2's second application window, FCPS files a Form 471, requesting \$2.025 million in support for network file servers that it intends to purchase in FY2, pending receipt of an FY2 funding commitment.
4. July 14, 2000. SLD issues a decision in which it refuses to process the School District's Form 471 for failure to meet minimum processing standards. SLD explains that "the USCN referenced in Block 5 is from the wrong funding year."
5. August 10, 2000. FCPS files a Letter of Appeal.
6. September 10, 2001. SLD issues a Decision on Appeal, reversing its initial decision, and *approving* the matter for data entry.
7. September 11, 2001 – July 2002. FCPS hears nothing from the SLD concerning the status of its application, despite several inquiries.
8. July 2002. FCPS engages the SLD in an investigation into the status of its application.
9. September 12, 2002. SLD issues a Revised Decision on Appeal. The purpose is "to correct an error" in its original, September 10, 2001 decision
 - i. SLD decides that the Commission's decision in *Henrico* precludes it from processing the School District's Form 471. In *Henrico*, the Commission held that a "Funding Year Three Form 470 cannot be used to establish the bidding for a funding year Two request."
 - ii. Based on *Henrico*, SLD rejects the School District's Form 471

II. Discussion

In its Letter of Appeal filed more than two years ago, FCPS contended, among other things, that it should not be penalized for the SLD's mistake, and the SLD agreed. Nothing in the Commission's *Henrico* Order undercut the SLD's original decision or the fair and equitable foundation upon which it rests. Certainly *Henrico* does not stand for the proposition that it is all right to penalize an applicant for failing to follow an administrative rule, where the agency responsible for enforcing it has made compliance with that rule impossible. Nor does *Henrico* require the SLD to punish an applicant for attempting to file a Form 470 for a multi-year contract

(c.g., FY2, FY3, and beyond) simply because it had the misfortune of filing it on a day when the SLD's system would not allow it to perfect a perfect application. To the contrary, *Henrico* requires an applicant to select the first year for which it intends to seek service as the designated funding year for that service's Form 470. On the subject of which funding year an applicant is supposed to select when that funding year is not an available option, the Commission, not surprisingly, was silent.

On December 8, 1999, FCPS had no choice but to select FY3 as the funding year for its Form 470. Whether on that day FCPS would have selected the FY2 option from the drop-down menu, if the SLD had made it available, is moot, as it simply was not an option. Admittedly there were many pragmatic, application-related reasons for FCPS not to select FY2. Indeed, FCPS even argued in its Appeal that no reasonable applicant at the time likely would have opted for FY2, even if it had been available because, between the two funding years, there was more likely to be funding available in FY3. However, in the final analysis, what FCPS ultimately would or would not have done is entirely speculative and therefore irrelevant. The determinative fact is that the option to select FY2 did not exist.

It is also important to note, as FCPS also argued in its Appeal, that there were many good reasons for eliminating the Form 470 funding year dating requirement altogether. But that too misses the point. On December 8, 1999, when FCPS went on-line to file its Form 470, the SLD offered FCPS no FY2 option. That, we submit, is the single fact upon which this entire case turns. It is the fact upon which the SLD likely reversed itself, and the fact upon which the Commission should rely in ordering the SLD to reinstate the School District's Form 470.

Because of the unusual circumstances here, the facts in *Henrico* are easily distinguishable. In *Henrico*, the Commission found that the SLD had correctly rejected the school district's application because it "had relied on an FCC Form 470 seeking services in Funding Year 3 to support an application for services in Funding Year 2." *Henrico* at para 6. Whether or not it was the case, there was no finding in *Henrico* or even a suggestion that the Form 470 FY2 option had been unavailable to the applicant. Thus, it could not have played any role in the Commission's decision.

The facts in that case, therefore, are substantially and materially different from the facts in this one. Here, FCPS filed its Form 470 during FY2, sought those services in FY2 and, finally, would have purchased all of those services in FY2, if it had received a timely funding commitment. FCPS does not dispute that it was also seeking a contract to cover FY3, but seeking a contract prospectively for multiple funding years. the Commission found in *Henrico*, is acceptable.

In this case, therefore, unlike the facts set forth in *Henrico*, any miscommunication or misunderstanding or technical rule violation that may have occurred was clearly not the School District's fault. Moreover, the technical violation, to the extent there was one, had no practical effect. Indeed, any vendor contacting FCPS as a result of its so-called FY3 Form 470 would have immediately discovered and been extremely pleased to learn that the School District was interested in procuring services immediately. Realistically, it is impossible to imagine any vendor qualified to fulfill an order of this magnitude not contacting a school district of this size simply because its Form 470 was designated "FY3," as opposed to "FY2." As a practical matter, any qualified vendor that would have opted to sit on the sidelines for that reason with this kind of business at stake would have been grossly negligent. As it turned out, of course, the agreement with the successful vendor covered both funding years.

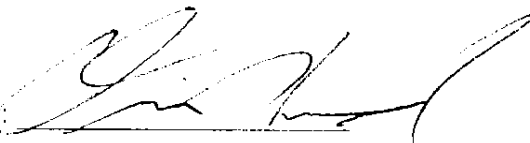
Accordingly, for all of the above reasons, we urge the Commission either to (a) find that its ruling in *Henrico* does not apply to the facts in this case; (b) waive the application of the *Henrico* rule, as it serves the public interest not to penalize an applicant for failing to follow a rule when an agency makes compliance with that rule impossible; or (c) find that *Henrico* was wrongly decided with respect to contracts (as opposed to tariffed or month-to-month services), as assigning a specific funding year to a Form 470 for contracts, as a practical matter, serves no useful competitive or administrative purpose.

III. RELIEF SOUGHT

FCPS respectfully requests that the Commission reverse the SLD's Revised Decision on Appeal and instruct the SLD to expedite the processing of the School District's March 10, 2000 Form 471 application.

Respectfully submitted,

FAIRFAX COUNTY PUBLIC SCHOOLS

By: 

Orin R. Heend
Funds For Learning, LLC
2111 Wilson Blvd. Suite 700
Arlington, VA 22201
703-351-5070

cc: Deborah Sansone
Fairfax County Public Schools
DIT/Financial Management
4107 Whitacre Road, V-26
Fairfax, VA 22032



Universal Service Administrative Company

Schools & Libraries Division

Exhibit A

Revised Administrator's Decision on Appeal - Funding Year 1999-2000

September 12, 2002

Orin Hcend
Funds for Learning
Re: Fairfax County Public Schools
2111 Wilson Boulevard, Suite 700
Arlington, VA 22201

Re: Billed Entity Number: 126423
NCS Barcode: NEC.471.03-13-00.29600003
Funding Request Number(s): 1 Not Assigned
Your Correspondence Dated: August 10, 2000

The purpose of this letter is to correct an error on your Administrator's Decision Letter dated September 10, 2001. Accordingly, the SLD is revisiting its decision, and this letter will replace the aforementioned September 10, 2001 Administrator's Decision Letter. After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Two Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent. The SLD apologizes for any inconvenience caused by the September 10, 2001 Administrator's Decision Letter.

Funding Request Number: 1 Not Assigned
Decision on Appeal: Denied in Full
Explanation:

- Your appeal claims that the SLD's decision to deny funding for this request was incorrect. You claim that the Year Three Form 470 can be used to establish the bidding for this Funding Year Two Service because the Form 470 is "evergreen" and the request on this application was covered by a contract that had already been subject to the required 28-day posting period. You also claim that the SLD web site did not offer the option to a file a Funding Year Two Form 470 on December 8, 1999, when this Form 470 was filed. You also claim that no reasonable filer would have chosen the Funding Year Two option had it been available. You feel you have

complied with program rules, and you would like the SLD to reconsider their decision to deny funding for this application.

- On your Form 471 you indicated that the establishing Form 470 for this service was Form 470 Number: 617080000266888. On Block 1 Item 2 of this Form 470 you indicated that you were requesting bids for services to be delivered from July 1, 2000 to June 30, 2001, which is the Funding Year Three time frame. In FCC Order **DA: 02-83** the FCC ruled that the Funding Year Three Form 470 cannot be used to establish the bidding for a Funding Year Two request. You have failed to provide a valid Funding Year Two Form 470 that established the bidding for these services. Therefore, consistent with FCC order DA: 02-83 your application should not be considered for funding. Consequently, your application **will** not be considered for funding, and your appeal is denied in full.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service: FCC, Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. **The FCC must RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER for your appeal to be filed in a timely fashion.** Further information and new options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Michael Shaulis
Fairfax County Public Schools
9525-A Main Street
Fairfax, VA 22031



RECEIVED SEP 12 2001
RECEIVED SEP 12 2001

Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

September 10, 2001

Orin Heend
RE: Fairfax County Public Schools
Funds for Learning
2111 Wilson Boulevard, Suite 700
Arlington, VA 22201

Re: Billed Entity Number: 126423
NCS Barcode: NEC.471.03-13-00.29600003
Funding Request Number(s): 1 Not Assigned
Your Correspondence Dated: August 10, 2000

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Two Second Window Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 1 Not Assigned
Decision on Appeal: **Approved for Data-Entry**
Explanation:

- Your appeal has brought forward persuasive information that your application should be data entered and considered for funding.

The SLD will now data enter your application. Once this has been completed the SLD will review your application for eligibility and compliance with program rules. Once a final determination has been made **the** SLD will issue a new Funding Commitment Decision Letter to you and to each service provider affected by this decision. SLD will issue the Funding Commitment Decision Letter to you as soon as possible.

We **thank** you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Michael Shaulis
Fairfax County Public Schools
9525-A Main Street
Fairfax, VA 22031



August 10, 2000

SLD/USAC
Correspondence Unit
Box 125
80 South Jefferson Street
Whippany, NJ

Letter of Appeal

Applicant Name: Fairfax County Public Schools
Billed Entity No.: 126423
NCS Bar Code: NEC.471.03-13-00.29600003

USAC Notice Date: July 14, 2000
Program Year: Year Two (Supplemental)
Form 471 App. No: N/A
FRN: N/A

Reason for Rejection:

Failure to meet minimum processing standards.

“The USCN referenced in Block 5 is from the wrong funding year.”

(see attached USAC letter dated July 14, 2000)

We are filing this appeal for and on behalf of Fairfax County Public Schools (“FCPS”). The SLD’s stated reason for refusing to process this Form 471 is incorrect. Not only does the Form 471 satisfy all of the program’s published minimum processing standards, it is valid and complete in *all* other respects and should, therefore, be processed and funded in full.

Facts

FCPS filed the establishing Form 470 in issue, USCN# 61708000026888, in Program Year 2 (“PY2”). January 5, 2000 was the allowable contract date for *the* products and services, including file servers, that this Form 470 covered. On January 12, 2000, after the allowable contract date and still in PY2, FCPS awarded a contract for Compaq file servers worth an estimated \$4.5 million to ISMART, a Compaq reseller. Under that contract, FCPS could begin purchasing file servers immediately, but chose not to do so, as PY3 presented better prospects for E-rate support. On March 10, 2000, when

prospects for receiving E-rate support in PY2 improved, FCPS filed a PY2 Form 471 requesting discounts on Compaq file servers. On July 14, 2000, the SLD refused to process the PY2 471 on the ground that the form referenced a Form 470 "from the wrong funding year."

Discussion

1. **FCC REGULATIONS DO NOT REQUIRE AN APPLICANT TO POST TWO ESTABLISHING FORM 470s FOR THE SAME CONTRACT.**

The SLD's rationale for refusing to process this Form 471, namely, that the Form 470 "referenced in Block 5 is from the wrong funding year," is based on an incorrect premise. The incorrect premise is that an applicant, who filed an "evergreen" Form 470 *before* October 25, 1999, had to file *one* establishing 470 to qualify for discounts in PY2 and PY3 under the resulting contract, but that an applicant, who filed a Form 470 *after* October 25, 1999, (when the SLD changed its on-line form; *see* SLD "What's New" archive for 10/25/99) had to file *two* Form 470s, one for PY2 and another for PY3, to reach the exact same result. Although FCC regulations initially required a contract-establishing Form 470 to be posted to support the contract's first year of discounts and *proforma* Form 470 filings to support Form 471s in subsequent years in connection with the same, multi-year contract, FCC regulations have *never* required more than one *establishing* Form 470 for the *same* contract.

Furthermore, common sense dictates that the E-rate program is hardly well served when an applicant's ability to qualify for E-rate discounts comes down to nothing more than sheer dumb luck. For FCPS to have no chance of receiving \$2.025 million dollars in PY2 E-rate support (45% of \$4.5 million) simply because it filed a Form 470 on one day in PY2, rather than on another day in PY2, is inequitable at best.

2. **FCPS HAD NO CHOICE BUT TO FILE A SO-CALLED PROGRAM YEAR THREE FORM 470, AS THE SLD WEB SITE DID NOT PROVIDE A PROGRAM YEAR TWO OPTION ON DECEMBER 8, 1999.**

Even assuming, for argument's sake, that FCC rules required FCPS to file a Form 470 that was clearly distinguishable as a PY2 Form 470 (as opposed to an "incorrect" PY3 Form 470), the Form 471 in issue here still should not be rejected -- as the SLD's web site, on December 8, 1999, made it impossible for FCPS to file a Form 470 for the "correct" program year.

In the fall of 1999, the SLD issued a new Form 470. On October 25, 1999, the SLD altered the interface and underlying architecture of its web site to accommodate this change. Therefore, on December 8, 1999, when FCPS went on-line to post its Form 470, the SLD web site's "Program Year" field did not include (to the best of our knowledge and belief) a 1999 - 2000 (PY2) option. Although a staff person in SLD Problem Resolution claims that this option was available at the time, he could not provide a screen shot or otherwise support this assertion.

Discussions we have had with other Form 470 filers support our contention that no **PY2** option was available at the time FCPS went on-line to file its Form 470. [We acknowledge that SLD later made this option available, but we do not believe it occurred until after the close of the PY3 filing window.] Therefore, if the SLD refuses to reinstate the FCPS Form 471 for failure to reference a PY2 470, we request that the SLD immediately **furnish** to us an archived copy of the relevant page of the SLD on-line Form 470 exactly as it appeared on December 8, 1999. FCPS **will** need this documentation to determine whether to appeal further to the FCC on this basis, and it will have only a short 30 days to make that determination.

3. **EVEN IF THE ON-LINE FORM 470 PRESENTED A PY2 OPTION ON DECEMBER 8, 1999, NO REASONABLE ON-LINE FILER WOULD HAVE SELECTED IT.**

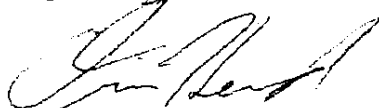
No reasonable E-rate applicant going on-line on December 8, 1999 to file a Form 470 for services that could be delivered in both PY2 and PY3 ever would have selected the PY2 option, even *if* it was available. The PY2 window application period was long over, and applicants had no reason to believe, based on their PY1 experience and SLD reports, that any additional funding would remain for PY2 471s filed at that time. The PY3 window application period, on the other hand, was then in progress. So, in the final analysis, what choice did the applicant really have? Of course the applicant would choose PY3. He or she **would** have been foolish to do otherwise.

One last question remains, however. Should the SLD expect a reasonable, well-informed E-rate applicant, after selecting PY3 on the on-line Form 470, to go back on-line and complete a duplicate Form 470 for the exact same contract, but this time select PY2 from the drop-down menu? The answer, we submit, is definitely not. Nothing in the regulations, the SLD web site, or any other published information that we have come across to help guide the applicant through this now complex regulatory process would have led the reasonable, well-informed E-rate applicant to believe that he or she would be required to file two identical establishing Form 470's for the exact same contract.

Requested Relief

Accordingly, for all of the reasons set forth above, we request that the SLD reverse its decision to reject the Form 471 in issue, continue processing it, and fund it to the extent that funding is available.

Sincerely,



Orin Heend

cc: Michael Shaulis, Coordinator - Contracts and Business Administration
Fairfax County Public Schools



Schools and Libraries
Division
80 So Jefferson Rd
Whippany, NJ 07981

July 14, 2000

NCS Bar Code: NEC.471.03-13-00.29600003

Year 2 Application Return

MICHAEL SHAULIS
FAIRFAX COUNTY PUBLIC SCHOOLS
9525-A MAIN STREET
FAIRFAX, VA 22031

Dear Applicant:

This letter is your notification that the entire FCC Form 471, *Services Ordered and Certification Form* you submitted did not meet Minimum Processing Standards. Therefore, we are returning your Form 471 with this letter, which means that the Schools and Libraries Division (SLD) of USAC will not process any portion of it. Here is an explanation of the specific reason(s) your Form 471 did not meet the Minimum Processing Standards:

- The USCN referenced in **block 5** is **from** the wrong **funding year**.

If you disagree with this decision and you wish to appeal to the SLD, your appeal must be made in writing and received by us within 30 days of date on this letter. In your letter of appeal, please include: correct contact information for the appellant, information on the decision you are appealing, a copy of this letter and an original authorized signature. Appeals sent by fax, e-mail or phone call cannot be processed. Please mail your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125-Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC) so that it is received within 30 days of the date on this letter. You may send your notice of appeal to: FCC, Office of the Secretary 445 12th Street, SW; Room TW-A325; Washington, D.C. 20554.

Thank you for your interest in the Schools and Libraries Program.

Schools and Libraries Division of Universal Service Administrative Company

Enclosure:

Form 471

FCC Form
471

School Universal Service Services Ordered and Certification Form

Approval h/ OM8
3060-0806

This form asks schools and libraries to list the eligible telecommunications-related services they have ordered and estimate the annual charges for them so that the Schools and Libraries Corporation can set aside sufficient support to reimburse providers for services.

Estimated Average Burden Hours Per Response: 6 hours

Please read instructions before completing.

(To be completed by each Billed Entity)

Block 1: Applicant Address and Identifications (School, library, or consortium desiring Universal Service funding.)

1. Name of Applicant (Billed Entity) Fairfax County Public Schools		2. Funding Year July 1, 1999 - June 30, 2000	
3a. NCES School Code (if individual school) or NCES Library Code (if individual library) 51-01260			
3b. 471 Application Number (Administrator will insert this)		3c. Billed Entity Number 126423	
4a. Type of Applicant (Check only one box.) <input type="checkbox"/> school <input checked="" type="checkbox"/> school district <input type="checkbox"/> library or library consortium under the LSTA <input type="checkbox"/> consortium of multiple entities		4b. If applicant is a consortium, check all other boxes that apply: <input type="checkbox"/> includes non-governmental entities ineligible for support <input type="checkbox"/> region of a state <input type="checkbox"/> statewide <input type="checkbox"/> multi-state <input type="checkbox"/> state educational agency <input type="checkbox"/> local educational agency <input type="checkbox"/> educational service agency	

5. Applicant's Street Address, P.O. Box, or Route Number

City Fairfax	State VA	Zip Code 22031	Telephone Number: 703-764-2446	E-mail Address
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City	State	Zip Code
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Block 2: Purpose of Request

7. Purpose of Request: (Check all that apply, if any.)	
a. <input type="checkbox"/> Discount on contract(s) signed prior to a request being posted on the Administrator's website. Was an FCC Form 470 filed with regard to all the contract(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
b. <input checked="" type="checkbox"/> Discount on contract(s) signed after a request being posted on the Administrator's website.	
c. <input type="checkbox"/> Minor modification or supplement to existing contract(s) for which a Form 471 was already filed. 471 Application Number _____	

8a. Number of students 148,822	8b. Number of library patrons
9. Number of buildings to be served 205	10. Number of rooms to be served 12,000

Contact Person's Name: Michael Shaulis and Phone Number: 703-764-2446

Block 5: Services Ordered

15. "Shared" services: AILEXCEPT site-specific, internal connections and dedicated ("private line") connections from only one school or library to an ISP or other end-user.

(1)		(2)	C O N T R A C T			(6)	(7)	Amount			(10)	(11)
SLC Service Provider Number or Full Legal Name of Service Provider	Universal Service Control Number for Form 470 on which this is based	(3)	(4)	(5)	Services or Products	Service Start Date	Estimated One Time Pre-discount Cost	Estimated Monthly Pre-discount Cost	Estimated Total Annual Prediscount Cost	Percentage Discount (from item 14)		
ISMART	617080000266888				Telecommunication Services							
143020750					Internet Access							
		RQ00-365638-16A	01/12/2000	9/30/2003	Internal Connections (Shared)	01/12/2000	\$4,500,000		\$4,500,000	45%		
					Telecommunication Services							
					Internet Access							
					Internal Connections (Shared)					45%		
					Telecommunication Services							
					Internet Access							
					Internal Connections (Shared)					45%		

16 "Site Specific" Services: Internal connections not shared by multiple schools or libraries and dedicated ("private end-user).

SLC Number of Service Provider (Obtain from Service Provider)	CONTRACT					(See instructions about rounding)				School or Library Code (Listed on website)
	(2) Universal Service Control Number for Form 470 on which this is based	(3) Contract Number (if applicable)	(4) Award Date	(5) Expiration Date	Services or Products	Service Start Date	(8) Estimated One Time Pre-discount Cost	(9) Estimated Monthly Pre-discount Cost	(10) Estimated Total Annual Pre-discount Cost	Percent- age Dis- count (from Item (4))
					Dedicated Services					
					Internal Connections					
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Entity Number: **0000126423**
Contact Person: **Michael Shaulis**

Fairfax County Public Schools
Phone Number **703-764-2446**

Item 17 Description of Services Attachment

Vendor / SPIN		Contract #	Description of Services
ISMART	143020750	RQ00-365638-16A	Compaq network file servers for schools throughout the district

Please note that the Form 470 on which this Form 471 is based was filed during Program Year Two. Also note that the multi-year period covered by this E-rate eligible contract bridges both Program Years Two and Three. Under the contract, the school district may purchase the file servers in either program year. If funding is approved for this contract in a timely manner, the district will purchase the file servers in Program Year Two.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Henrico County School District)	File No SLD-209024
Richmond, Virginia)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc)	

ORDER

Adopted: January 11, 2002

Released: January 14, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Henrico County School District (Henrico), Richmond, Virginia, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Henrico seeks review of SLD's denial of its Funding Year 2 application for discounts under the schools and libraries universal service mechanism.² For the reasons discussed below, we deny Henrico's Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Charles Stallard, Henrico County Public Schools, to Federal Communications Commission, filed August 16, 2000 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division or the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. On March 29, 2000, Henrico filed an FCC Form 471 for Funding Year 2 including ten funding requests, each seeking discounted internal connections.⁶ It did not file an FCC Form 470 in Funding Year 2.⁷ Henrico's FCC Form 471 referenced FCC Form 470 App. No. 952970000283996, a Funding Year 3 Form 470 that was posted to SLD's web site on December 20, 1999.⁸ On July 17, 2000, SLD rejected Henrico's Funding Year 2 application for discounts because Henrico had not specified an FCC Form 470 for Funding Year 2 in connection with its Funding Year 2 requests.⁹

4. In its Request for Review, Henrico concedes that it relied on a Funding Year 3 FCC Form 470 in support of its Funding Year 2 application." However, it argues that this should not be grounds for the rejection of its application, asserting that "[n]owhere in your correspondence, procedures or instructions does it stipulate that the 1999-2000 application must be based on a 1999-2000, 470 form." It requests that its Funding Year 2 application be

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ FCC Form 471, Henrico County School District, filed March 29, 2000 (Henrico Form 471). The funding window for Funding Year 2 initially closed on April 6, 1999. See *Request for Review by Danbury Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-NEC.471.04-13-00.31900001, CC Dockets No. 96-45 and 97-21, Order, DA 01-1251, n.8 (Conn. Car Bur. rel. May 23, 2001). However, it was later determined that funds were available in excess of what had been requested by applicants who filed within the original window, and so, on March 1, 2000, SLD announced that it would re-open the filing window to permit additional applications. See *id.*; see also SLD web site, What's New (March, 2000), <<http://www.sl.universalservice.org/whatsnew/032000.asp#consider2>>. The re-opened window closed on March 31, 2000. *Id.*

⁷ Request for Review, at 1

⁸ FCC Form 470, Henrico County School District, posted December 20, 1999.

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul F. Kolmetz, Henrico County School District, dated July 17, 2000 (Rejection Letter).

¹⁰ Request for Review, at 1

¹¹ *Id.*

evaluated based on its Funding Year 3 FCC Form 470, which does include a service request for internal connections.¹²

5. We reject Henrico's assertion that it may rely on an FCC Form 470 posted in Funding Year 3 in support of Funding Year 2 service requests. As was stated in SLD's Program Description, funding of discounts is on a fiscal year basis, beginning July 1st of each year and running through the following June 30, and thus, new FCC Form 470s and associated FCC Form 471s must be posted each year.¹³ Further, in each FCC Form 470, an applicant must specify the specific funding year for which it is applying for funds. Thus, it is necessarily presenting for competitive bidding a request for services provided only within that year, not subsequent or later years.¹⁴ As a result, an FCC Form 470 seeking services in one year cannot, as a general matter, be used to demonstrate that a request for discounts in another year has been subjected to competitive bidding.

6. There is an exception that allows applicants to rely in one year on a FCC previous year's FCC Form 470 where the bidding process resulted in a binding multi-year contract.¹⁵ However, this exception is not relevant here. In this case, Henrico seeks discounts for Funding Year 2 and Henrico is relying on an FCC Form 470 filed in the following year, Funding Year 3, not the previous year, Funding Year 1.¹⁶ Moreover, Henrico is seeking discounts for new contracts, not the subsequent years of a pre-existing multi-year contract. We conclude that, because Henrico relied on an FCC Form 470 seeking services in Funding Year 3 to support an application for services in Funding Year 2, SLD correctly rejected the application. Henrico's Request for Review must therefore be denied.

¹² *Id.*

¹³ See SLD Year 2 Program Description, at 12 (December 1998).

¹⁴ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (September 1998)(Form 470 Instructions), at 4.

¹⁵ 47 C.F.R. § 54.511(c)

¹⁶ See FCC Form 470, Henrico County School District, App. No. 283996952970000, filed December 20, 1999; Henrico Form 471, at 2-3.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's **rules**, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Henrico County Public Schools, Richmond, Virginia, on August 16, 2000 IS DENIED

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau